

## Calendar No. 902

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
110-433

### VETERANS' EDUCATIONAL ASSISTANCE BENEFITS TECHNICAL CORRECTION ACT OF 2008

JULY 26, 2008.—Ordered to be printed

Mr. AKAKA, from the Committee on Veterans' Affairs,  
submitted the following

#### R E P O R T

together with

#### SUPPLEMENTAL VIEWS

[To accompany S. 3339]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs (hereinafter, "Committee"), reports favorably an original bill (S. 3339) to amend chapter 33 of title 38, United States Code, to clarify and improve authorities relating to the availability of post-9/11 veterans educational assistance, and for other purposes, and recommends that the bill do pass.

#### INTRODUCTION

On June 26, 2008, the Committee met in legislative session to consider a number of measures pending before the Committee, including an original measure proposed by Chairman Daniel K. Akaka to clarify and improve authorities relating to the availability of post-9/11 educational assistance.

#### COMMITTEE HEARING

No hearings were held on this measure.

#### COMMITTEE MEETING

On June 26, 2008, the Committee met in open session to consider legislation pending before the Committee. Among the items consid-

ered was an original bill making technical corrections to clarify and improve authorities relating to the availability of post-9/11 educational assistance (hereinafter, “Committee bill”). The Committee voted by voice vote to report the Committee bill to the Senate.

#### SUMMARY OF THE COMMITTEE BILL AS REPORTED

The Committee bill contains provisions that would amend chapter 33 of title 38, United States Code, to:

1. Clarify how benefit levels are to be calculated for certain training outside the United States;
2. Clarify that proprietary for-profit institutions of higher learning would not be eligible to participate in the “Yellow Ribbon G.I. Education Enhancement Program” (hereinafter, “Yellow Ribbon Program”);
3. Clarify the nature of the agreements between the Department of Veterans Affairs (hereinafter, “VA”) and institutions participating in the Yellow Ribbon Program; and
4. Require VA to take steps necessary to ensure that the education provisions in chapter 33 can be implemented on August 1, 2009, and provide VA with authority to proceed under interim or final regulations.

#### BACKGROUND AND DISCUSSION

On January 4, 2007, Senator Webb introduced S. 22, the Post-9/11 Veterans Educational Assistance Act of 2007. Since introduction, this measure was listed on the agenda of three hearings of the Committee: May 9, 2007; July 31, 2007; and May 7, 2008.

On May 15, in the context of the Supplemental Appropriations Act, 2008 (H.R. 2642), the House of Representatives passed provisions derived from S. 22 by a vote of 256 to 166. The Senate passed virtually identical provisions on May 22 by a vote of 75 to 22.

Following the resolution of differences between the House and Senate versions of the supplemental, the measure was presented to the President and signed into law as Public Law 110–252 on June 30, 2008. Title V of that public law establishes a new program of educational assistance to individuals serving in the Armed Forces since September 11, 2001, which is codified in a new chapter 33 of title 38.

Even before the measure became law, the Committee was made aware of a variety of issues and concerns that VA and the Department of Defense (hereinafter, “DOD”) raised that will need to be addressed in order to ensure the smoothest possible transition to this new program. This Committee bill is the first of what the Committee envisions will be a series of measures developed with broad input from the Executive branch and from a bipartisan coalition dedicated to working together to make the new program a success.

The Committee bill consists of one section with provisions addressing four issues as discussed below.

##### *A. Modifications of Base Amounts of Educational Assistance for Training Outside the United States*

As enacted in Public Law 110–252, new section 3313 prescribes the manner in which rates of benefits are to be paid for college

level training on more than a part-time basis. Briefly, rates for individuals are to be computed based on the lesser of the actual costs of tuition and fees regularly charged by an institution of higher learning for undergraduate programs or the highest rate of such charges regularly charged in-State students by a four-year public institution of higher learning offering an approved undergraduate program of education within the state where the institution is located. In addition, individuals training on more than a half-time basis receive a living stipend based on the zip code for the area in which the institution of higher learning is located.

This new section 3313, however, does not provide for a means of computing the maximum rate to be paid to individuals training outside the United States at facilities that are not branches of institutions based in the United States and does not clearly set forth the maximum rate for individuals training outside the United States at branches of institutions based in the United States.

Thus, subsection (a) of the Committee bill would clarify that the maximum rate to be paid to individuals training outside the United States at branches of institutions based in the United States would be based on the highest rate of tuition and fees regularly charged full-time in-State students pursuing undergraduate programs of education in the state in which the institution is located.

It would also provide that the rate to be paid for training outside of the United States at facilities that are not branches of institutions based in the United States is to be based on the national average charged for full-time in-State students pursuing undergraduate programs of education at public four-year institutions during the preceding academic year. It would further provide that for those students, the rate of the monthly living stipend would be based on the national average of the basic allowance for housing payable for a servicemember with dependents in pay grade E-5 residing in the continental United States. The Committee expects that this would be computed based on data available from "selected military compensation" as published annually by the Department of Defense.

#### *B. Institutions Eligible to Participate in a Program of Public-Private Contributions for Additional Educational Assistance*

Under section 3317 of the new chapter 33, there is established a program of public-private contributions for additional educational assistance to be known as the Yellow Ribbon Program. Under this program, colleges and universities would be able to further offset the costs of a program of education by making available to participating individuals an additional amount of assistance. That additional assistance would be matched dollar-for-dollar by VA, up to 50% of the difference between the cost of tuition and fees and the amount otherwise provided under chapter 33 for tuition and fees.

In view of concerns expressed by VA, subsection (b) of the Committee bill would amend section 3317 to provide that only public and private non-profit institutions of higher learning would be eligible to participate in such matching programs.

#### *C. Requirements for Participating Institutions*

Under the section 3317 Yellow Ribbon Program, the new provisions added by Public Law 110-252 require the VA Secretary to

“enter into an agreement with each college and university seeking to participate in the program” specifying various elements of the manner in which the matching program would be conducted.

VA testified before the Committee that the term “enter into an agreement” would require VA to enter into a “Memorandum of Understanding” with each individual participating institution. In order to remove any such requirement, subsection (c) of the Committee bill would revise existing law to remove any reference to “entering into an agreement”. It would instead require that participating colleges or universities submit to the Secretary of VA a report on the manner by which the college or university would provide additional assistance to the individual and the amount of the contributions to be made by the college or university for each covered individual. In addition, the Committee bill would clarify that a participating college or university must offer the same percentage of additional assistance to all individuals receiving assistance under the Yellow Ribbon Program who are pursuing a program of education at that college or university.

*D. Anticipation of Implementation and Interim and Final Regulations*

The new program of educational assistance established in the new chapter 33 is to become effective generally on August 1, 2009. The Committee is sensitive to the serious time constraints that this effective date places on those involved with implementation of a complex and substantially different program than those that exist under titles 10 and 38, United States Code, at the present—especially as it relates to the need to promulgate and finalize regulations prior to that date.

The Committee is also aware that the upcoming change in Administration could exacerbate the situation, especially in terms of clearing final regulations through the Office of Management and Budget.

Thus, subsection (d) of the Committee bill would require VA to take appropriate actions to ensure that the new program can be implemented on August 1, 2009, including the authority to proceed forward with interim regulations, if necessary.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter “CBO”), estimates that enactment of the Committee bill would, relative to current law, decrease direct spending for veterans’ educational benefits by \$181 million over the 2009–2013 period and \$479 million over the 2009–2018 period. Enactment of the Committee bill would not affect the budget of state, local, or tribal governments.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, July 23, 2008.

Hon. DANIEL K. AKAKA,  
Chairman,  
Committee on Veterans' Affairs,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for a bill to amend chapter 33 of title 38, United States Code, to clarify and improve authorities relating to the availability of post-9/11 veterans educational assistance, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Camille Woodland.

Sincerely,

PETER R. ORSZAG,  
Director.

Enclosure.

cc: Honorable Richard Burr, Ranking Member.

#### *Summary*

This bill would modify the Post-9/11 Veterans Educational Assistance (Post-9/11 GI Bill) by prohibiting private, for-profit colleges and universities from participating in the Yellow Ribbon GI Education Enhancement Program (Yellow Ribbon program), and by setting benefit levels for individuals attending college outside the United States. CBO estimates that enacting the bill would decrease direct spending for veterans' education benefits by \$181 million over the 2009–2013 period and \$479 million over the 2009–2018 period.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA); any costs to state, local, or tribal governments would be incurred voluntarily.

#### *Estimated Cost to the Federal Government*

The estimated budgetary impact of the bill is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—											
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009– 2013	2009– 2018
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority ...	–6	–35	–41	–48	–51	–54	–56	–59	–63	–66	–181	–479
Estimated Outlays .....	–6	–35	–41	–48	–51	–54	–56	–59	–63	–66	–181	–479

#### *Basis of Estimate*

This bill would modify the Post-9/11 Veterans Education Assistance Act of 2008, recently enacted as Public Law 110–252. The Post-9/11 GI Bill will provide education benefits to veterans and servicemembers who have served 90 or more cumulative days on active duty since September 11, 2001. Beginning August 1, 2009,

individuals who have served at least three years on active duty and attend school more than half time will be eligible for the full benefit for 36 months, including:

- The cost of tuition and fees up to the maximum in-state undergraduate tuition and fees for the state in which they live,
- A monthly housing allowance tied to the basic allowance for housing (BAH) for active-duty members in the E5 pay grade with dependents based on the zip code of the school they are attending, and
- A \$1,000 stipend for books and supplies.

The provisions of this bill would clarify and limit payment of benefits under several provisions of the Post-9/11 GI Bill. CBO estimates that, in total, this bill would decrease direct spending by \$479 million over the 2009–2018 period.

**Yellow Ribbon Program.** Under the Yellow Ribbon program, the Post-9/11 GI Bill will allow colleges and universities to cover a portion of tuition and fees that are in excess of the tuition cap in exchange for a matching contribution from the Department of Veterans Affairs (VA). This bill would prohibit private, for-profit colleges and universities from participating in the program.

Based on information from the National Association of Independent Colleges and Universities, CBO anticipates that 80 percent of trainees attending private colleges and universities—nearly 60,000—will participate in the program under current law. Using student data from the Department of Education, CBO estimates that under this proposal 20 percent of eligible trainees attending private colleges and universities will be attending for-profit institutions. Those trainees would not be eligible to participate in the program under this bill, and CBO anticipates participation in the Yellow Ribbon program would decrease by nearly 12,000 trainees.

On average, CBO estimates that the combined contributions from VA and participating schools for the Yellow Ribbon program will cover 75 percent of the excess costs of tuition and fees for participating trainees. Based on current tuition and fee levels and projected increases in the cost of higher education, CBO estimates that VA's portion of Yellow Ribbon program costs will average \$4,000 per trainee per year. Therefore, CBO estimates that, over the 2009–2018 period, this provision would decrease direct spending by \$479 million.

**Payment for Training Outside the United States.** The Post-9/11 GI Bill allows for the possibility of using education benefits to attend colleges or universities outside the United States; however, benefit rates are tied to locations within the United States. Tuition is capped at the highest in-state tuition of the state in which the trainee is enrolled. Based on current law, it is unclear how out-of-country tuition payments would be paid under the in-state public tuition cap. This bill sets the payment level for out-of-country trainees at the average level of in-state, undergraduate tuition and fees paid by students at public institutions in the United States.

Under the Post-9/11 GI Bill, individuals will be eligible for BAH based on the zip code of the college or university they attend; however, it is unclear how individuals attending schools outside of the United States will be paid since foreign institutions do not have a zip code. This bill would set the monthly housing allowance for trainees attending college outside the United States at the average

level of BAH for the E5 pay grade with dependents inside the United States.

CBO believes that VA could set payment policies for out-of-country benefits through regulation under current authority and that those rates would not be significantly different from the rates specified in this provision. CBO therefore estimates that enacting this provision would have no significant budgetary impact.

*Intergovernmental and Private-Sector Impact*

The bill contains no intergovernmental or private-sector mandates as defined in UMRA. Any costs public institutions of higher education incur to comply with requirements to participate in education programs for veterans, including providing matching funds or submitting reports, would be incurred voluntarily.

**Estimate prepared by:** Federal Costs: Camille Woodland (226–2840); Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum (225–3220); Impact on the Private Sector: Daniel Frisk (226–2900).

**Estimate approved by:** Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that this original bill would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by Members of the Committee on Veterans' Affairs at its June 26, 2008, meeting. On that date, the Committee, by voice vote, ordered to report favorably an original bill to amend chapter 33 of title 38, United States Code, to clarify and improve authorities relating to the availability of post-9/11 educational assistance.

AGENCY REPORT

No agency reports were submitted in connection with this original bill.

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SUPPLEMENTAL VIEWS OF CHAIRMAN DANIEL K. AKAKA  
AND SENATOR JIM WEBB

TO ACCOMPANY S. 3339

As the Chairman of the Senate Veterans' Affairs Committee and as the original author of the "Post-9/11 Veterans Educational Assistance Act", we worked together closely over the course of the past year and a half to develop the provisions that were incorporated as part of Public Law 110-252 and that have now been codified in a new program of educational assistance in chapter 33 of title 38, United States Code.

Particularly important to that process was an agreement that we, along with the principal Republican cosponsors, reached on April 10, 2008, regarding a number of provisions—including the effective date of the new program. Specifically, we agreed that, instead of being effective on the date of enactment, the new chapter 33 program would be implemented on August 1, 2009, which would give VA time to put in place staffing, computer upgrades, necessary regulations and such other policies and procedures necessary to ensure a smooth transition to the new program. We further agreed that on August 1, 2008, there would be a 20-percent increase in the rates of benefits under current programs to make up in part for delay. Finally, we agreed that retroactive adjustments would be made in the benefits paid to those enrolled in and eligible for the new tuition and fees/living stipend benefits during the period August 1, 2008, to July 31, 2009.

In the course of drafting the legislation, the latter portion of this agreement relating to retroactive adjustments was not reflected in what was eventually signed into law on June 30, 2008.

We are working together diligently to do everything possible to make sure that our entire agreement and our commitment to those who have served in our Armed Forces since September 11, 2001, are fully kept.

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## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

### **TITLE 38—VETERANS' BENEFITS**

\* \* \* \* \*

### **PART III—READJUSTMENT AND RELATED BENEFITS**

\* \* \* \* \*

### **CHAPTER 33—POST-9/11 EDUCATIONAL ASSISTANCE**

\* \* \* \* \*

#### **Subchapter II—Educational Assistance**

\* \* \* \* \*

#### **SEC. 3313. EDUCATIONAL ASSISTANCE: AMOUNT; PAYMENT**

(a) \* \* \*

(b) \* \* \*

(c) **AMOUNT OF EDUCATIONAL ASSISTANCE.**—The amounts payable under this subsection for pursuit of an approved program of education are amounts as follows:

(1) In the case of an individual entitled to educational assistance under this chapter by reason of section 3311(b)(1) or 3311(b)(2), amounts as follows:

(A) An amount equal to the established charges for the program of education, except that the amount payable under this subparagraph **may not exceed the maximum amount of established charges regularly charged in-State students for full-time pursuit of approved programs of education for undergraduates by the public institution of higher education offering approved programs of education for undergraduates in the State in which the individual is enrolled that has the highest rate of regularly-charged established charges for such programs of education among all public institutions of higher education in such State offering such programs of education.** *may not exceed the amount as follows:*

*(i) In the case of an individual enrolled in an institution of higher learning located in the United States, the*

*maximum amount of established charges regularly charged in-State students for full-time pursuit of approved programs of education for undergraduates by the public institution of higher learning offering approved programs of education in the State in which the individual is enrolled that has the highest rate of regularly charged established charges for such programs of education among all public institutions of higher learning in such State offering such programs of education.*

*(ii) In the case of an individual enrolled in an institution of higher learning located in the United States who is pursuing a program of education at a branch of such institution that is located outside the United States, the maximum amount of established charges regularly charged in-State students for full-time pursuit of approved programs of education for undergraduates by the public institution of higher learning offering approved programs of education in the State in which is located the institution in which the individual is enrolled that has the highest rate of regularly charged established charges for such programs of education among all public institutions of higher learning in such State offering such programs of education.*

*(iii) In the case of an individual enrolled in an institution of higher learning not located in the United States, the average amount of established charges charged in-State students for full-time pursuit of approved programs of education for undergraduates by public institutions of higher learning throughout the United States during the preceding academic year.*

(B) A monthly stipend in an amount as follows:

(i) For each month the individual pursues the program of education (other than, in the case of assistance under this section only, a program of education offered through distance learning), a [monthly housing stipend amount equal to the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution of higher education at which the individual is enrolled.] *monthly housing stipend in an amount as follows:*

*(I) In the case of an individual enrolled in an institution of higher learning located in the United States, an amount equal to the monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution of higher learning at which the individual is enrolled.*

(II) *In the case of an individual enrolled in an institution of higher learning located outside the United States, an amount equal to the average monthly amount of the basic allowance for housing payable under section 403 of title 37 for a member with dependents in pay grade E-5 residing in the continental United States.*

(ii) For the first month of each quarter, semester, or term, as applicable, of the program of education pursued by the individual, a lump sum amount for books, supplies, equipment, and other educational costs with respect to such quarter, semester, or term in the amount equal to—

(I) \$1,000, multiplied by

(II) the fraction which is the portion of a complete academic year under the program of education that such quarter, semester, or term constitutes.

\* \* \* \* \*

#### SEC. 3317. PUBLIC-PRIVATE CONTRIBUTIONS FOR ADDITIONAL EDUCATIONAL ASSISTANCE

(a) ESTABLISHMENT OF PROGRAM.—[In instances where the educational assistance provided pursuant to section 3313(c)(1)(A) does not cover the full cost of established charges (as specified in section 3313), the Secretary shall carry out a program under which colleges and universities can, voluntarily, enter into an agreement with the Secretary to cover a portion of those established charges not otherwise covered under section 3313(c)(1)(A), which contributions shall be matched by equivalent contributions toward such costs by the Secretary.] *The Secretary shall carry out a program under which a college or university (other than a proprietary for-profit college or university) may, through voluntary contributions, cover a portion of the established charges for an approved program of education of an individual entitled to educational assistance under this chapter that would not otherwise be covered by section 3313(c)(1)(A). Subject to subsection (d), such contributions shall be matched by equivalent contributions toward such costs by the Secretary.* The program shall only apply to covered individuals described in paragraphs (1) and (2) of section 3311(b).

(b) DESIGNATION OF PROGRAM.—The program under this section shall be known as the “Yellow Ribbon G.I. Education Enhancement Program”.

[(c) AGREEMENTS.—The Secretary shall enter into an agreement with each college or university seeking to participate in the program under this section. Each agreement shall specify the following:

[(1) The manner (whether by direct grant, scholarship, or otherwise) of the contributions to be made by the college or university concerned.

[(2) The maximum amount of the contribution to be made by the college or university concerned with respect to any particular individual in any given academic year.

[(3) The maximum number of individuals for whom the college or university concerned will make contributions in any given academic year.

[(4) Such other matters as the Secretary and the college or university concerned jointly consider appropriate.]

(c) *REQUIREMENTS FOR PARTICIPATING INSTITUTIONS.*—A college or university participating in the program under this section shall—

(1) offer the same percentage of additional assistance to all individuals receiving educational assistance under this section who are pursuing a program of education at the college or university;

(2) submit to the Secretary a report on the manner (whether by direct grant, scholarship, or otherwise) by which the college or university shall cover portions of the established charges of individuals under the program; and

(3) submit to the Secretary a report on the amount of the contribution to be made by the college or university for each individual covered by the program.

(d) *MATCHING CONTRIBUTIONS.*—

(1) *IN GENERAL.*—[In instances where the educational assistance provided an individual under section 3313(c)(1)(A) does not cover the full cost of tuition and mandatory fees at a college or university, the Secretary shall provide up to 50 percent of the remaining costs for tuition and mandatory fees if the college or university voluntarily enters into an agreement with the Secretary to match an equal percentage of any of the remaining costs for such tuition and fees.] *The amount of any matching contribution by the Secretary under the program under this section with respect to the pursuit of a program of education by an individual entitled to educational assistance under this chapter may not exceed an amount equal to 50 percent of any costs for tuition and mandatory fees for the individual's pursuit of the program of education that are not otherwise covered under section 3311(c)(1)(A).*

(2) *USE OF APPROPRIATED FUNDS.*—Amounts available to the Secretary under section 3324(b) for payment of the costs of this chapter shall be available to the Secretary for purposes of paragraph (1).

(e) *OUTREACH.*—The Secretary shall make available on the Internet website of the Department available to the public a current list of the colleges and universities participating in the program under this section. The list shall specify, for each college or university so listed, appropriate information on the agreement between the Secretary and such college or university under subsection (c).] *REGULATIONS.*—*The Secretary shall prescribe regulations to carry out the program required by this section.*